IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.2393 OF 2000

Dr. Gopalkrishna Sharma & Ors. ..Petitioners

Vs.

The State of Maharashtra & Ors. ..Respondents

Mr.V.M.Thorat for Petitioners

Mr.R.V.Govilkar for Respondent No.1
Mr. A.P. Vanarshe, A.G.P. for Respondent Nos.2 & 3
Mr.A.J. Bhor i/b. Mr. N.V. Matai and
Mrs.S.J. Billimoria for Respondent No.4
Ms. Simran Prui for Respondent NO.5.

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 8TH APRIL, 2005.

P.C.

. This was a Petition filed by several Petitioners in a matter of Registration to super speciality courses in Medical. In the Petition the relief sought was basically for the super specility courses in the discipline MCh. (Neurology). Considering the averments in the Petition this Court has passed various orders from time to time. Pursuant to various orders the Petitioners who were admitted to super speciality courses have since completed their courses.

2. As the matter involved consideration of

admission to various super speciality courses, the State of Maharashtra and B.M.C. were asked to file affidavits explaining the position of the courses recognised by Meducal Council of India and the steps taken by them to meet the requirements set up by Medical Council of India for recognition of super specility courses and also Post Graduate courses not recognised as they were running the institutions involved.

3. On behalf of the State of Maharashtra Dattatrey Baburao Borhade, Under Secretary, Medical Education and drugs department, Mantralaya, Mumbai filed an affidavit setting out various steps that the Government have taken to meet the requirements as laid down by Medical Council of India. It is also set out that for some super speciality courses, the Government is finding it difficult to get full time Lecturers inspite of making efforts. The Government proposes to convince Medical Council of India, that considering the circumstances Medical Council of India should consider appointment of Honorary Teachers for giving recognition for super specilty courses. Reference is made to and directions given by the Government of India.

4. Similarly on behalf of the B.M.C. three affiants have filed affidavit who are with Colleges

which are conducted by the B.M.C. The various courses which are recognised by MCI in the Colleges run by the BMC has been set out. As an illustration it is pointed out that in the Neurosurgery Department there is vacancy for the post of Associate Professor. Various attempts were made to fill in the vacancies. However, selected candidates have not reported and for non-availability of eligible candidate, the post of Associate Professor is still vacant. It is also set out by them tht it is difficult to get qualified teachers in super speciality courses on account of non-meeting the standard prescribed by MCI. Students have not been enrolled for the super speciality courses where the BMC is unable to meet the requirements. It is not necessary to advert to the other averments set out in the Petition.

5. From what has been set out in the two affidavits, it becomes clear that both the State of Maharashtra and also B.M.C. are taking all possible steps to meet the requirements as set out by MCI. They have been unable to meet the requirements on account of non-availability of qualified personnel or qualified teachers.

. On behalf of Petitioner Mr. Thorat pointed out that though there are general candidates

available the posts cannot be filled in as they are promotional posts and there are no candidates available from the reserved candidates to fill in the posts. No such materials has been placed before us for consideration of the said argument. It is no doubt that Article 16 permits providing for reservation to Socially and Economically Backward Groups, including Scheduled Casts and Scheduled Tribes. It is however, still open to the State Government in the matter of super speciality courses, if otherwise candidates are available from the open category and no candidates available from the Reserved Categories to consider the change of policy atleast for some time till candidates from the reserved category become available or to deserve the posts till such time candidates from the reserved categories becaome available. This will in no way be contrary to the mandate as set out in Artilce 16 of Constitution of India.

. The State Government and B.M.C. based on the records and materials available before them if there are otherwise candidates available may consider the option in the matter of filling up of the vacant posts, so that candidates are selected and the public is not denied the right to medical attention in the super-speciality fields.

6. Considering the difficulties pointed out by both the State Governmnt and the B.M.C. the Medical Council of India in the event the State of Maharashtra and also B.M.C. apply for any

relaxation, may consider relaxation if otherwise there is substantial compliance with the other requirement except in the matter of staff posting. For example as has been set out in the affidavit of B.M.C., in the absence of qualified personnel the candidates are not being admitted presently. If candidates are not admitted for super speciality courses in the future there will be no personnel even to man the department or have super specialist departments. It is ultimately those who require the need for a specialised tratment who will suffer. M.C.I. may consider some relaxation only in such super speciality courses where presently there is nonavailability of sufficient staff if otherwise it would not effect the teaching of that course, so that the staff can be created for the furture demands in these super speciality courses.

7. On behalf of the Maharashtra University of Health Science learned Counsel makes statement that P.G. courses are no longer being conducted by them. Statement taken as noted.

8. Needless to state that until and unless M.C.I. recognises the course including if by way of relaxation no candidate would be admitted for the courses which are not recognised by M.C.I.

. With the above observations, Petition disposed of. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)